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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
BLACK MOUNTAIN SEWER CORPORATION,
AN ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE OF ITS
UTILITY PLANT AND PROPERTY AND FOR
INCREASES IN ITS RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO. SW-02361A-08-0609

**STAFF'S NOTICE OF FILING
DIRECT TESTIMONY**

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission")
hereby files the Direct Testimony of Staff witness Elijah O. Abinah in the above-referenced matter.

RESPECTFULLY SUBMITTED this 20th day of April, 2012.

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Arizona Corporation Commission
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Phoenix, Arizona 85007

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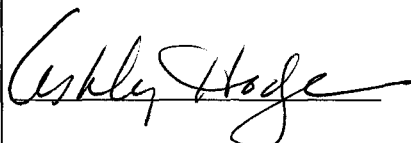
Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

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PAUL NEWMAN

Commissioner

SANDRA D. KENNEDY

Commissioner

BOB STUMP

Commissioner

IN THE MATTER OF THE APPLICATION OF
BLACK MOUNTAIN SEWER
CORPORATION, AN ARIZONA
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DOCKET NO. SW-02361A-08-0609

(REHEARING)

DIRECT TESTIMONY

OF

ELIJAH O. ABINAH

ASSISTANT DIRECTOR

UTILITES DIVISION

ARIZONA CORPORATION COMMISSION

APRIL 20, 2012

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INTRODUCTION

Q. Please state your name and business address.

A. My name is Elijah O. Abinah. My business address is 1200 West Washington Street, Phoenix, Arizona, 85007.

Q. Where are you employed and in what capacity?

A. I am employed by the Utilities Division ("Staff") of the Arizona Corporation Commission ("ACC" or "Commission") as the Assistant Director.

Q. How long have you been employed with the Utilities Division?

A. I have been employed with the Utilities Division since January 2003.

Q. Please describe your educational background and professional experience.

A. I received a Bachelor of Science degree in Accounting from the University of Central Oklahoma in Edmond, Oklahoma. I also received a Master of Management degree from Southern Nazarene University in Bethany, Oklahoma. Prior to my employment with the ACC, I was employed by the Oklahoma Corporation Commission for approximately eight and a half years in various capacities in the Telecommunications Division.

Q. What are your current responsibilities?

A. As the Assistant Director, I review submissions that are filed with the Commission and make policy recommendations to the Director regarding those filings.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address Staff's opinion on the request by the Boulders Home Owners Association ("BHOA") for a Commission order to close the Black

1 Mountain Sewer Company ("Black Mountain" or "Company") wastewater treatment
2 plant ("WWTP") and to respond to the testimony filed by the Company and Wind P1
3 Mortgage Borrower LLC (the "Resort").
4

5 **STAFF COMMENTS**

6 **Q. Can you please provide a brief background?**

7 A. Yes. On January 24, 2012, the Commission voted to grant the application of the BHOA
8 under ARS §40-252 to reopen Decision No. 71865. In Decision No. 71865, the
9 Commission found that a Wastewater Treatment Plant Closure Agreement ("Closure
10 Agreement") between the BHOA and the Company was an appropriate mechanism to
11 resolve ongoing order problems in the Boulders area. The Closure Agreement called for
12 closure of the treatment facility within 15 months of the satisfaction of certain conditions;
13 (i) acquisition of additional treatment capacity from the City of Scottsdale; (ii)
14 renegotiation of an effluent delivery agreement with the Resort; and (iii) approval of a
15 closure surcharge, capped at \$15 per month, per customer, to recover capital costs
16 associated with the plant closure.
17

18 **Q. Is Black Mountain in compliance with the Commission other and other regulatory**
19 **authorities?**

20 A. Yes. A status report from Arizona Department of Environmental Quality dated February
21 16, 2012, indicates that the Company is in compliance. In response to a data request (1.9)
22 issued to the Company by the Resort dated February 14, 2012, the Company indicated that
23 it is not aware of any exceedances or violations of applicable legal standards or permit
24 requirements regarding odors or noise levels emitted by the WWTP.

1 **Q. Did the Commission, in Decision No. 71865, order the closure of the WWTP?**

2 A. No. The Commission found that "the Closure Agreement provides an appropriate and
3 creative for solution for what we believe is a unique set of circumstances."¹
4

5 **Q. Is the Black Mountain wastewater treatment plant used and useful?**

6 A. Yes.
7

8 **Q. Does Staff believe that the Company may still have odors with the removal of the
9 WWTP?**

10 A. There are odors associated with lift stations and collection lines. During the Open
11 Meeting that approved Decision No. 71865, the Company indicated that it would not be
12 removing its lift stations or collection lines. In response to a Staff data request, the
13 Company has indicated that its plan is to abandon the force main, lift station (Quartz
14 Valley Court) and connecting gravity line leading into the WWTP and connect the Quartz
15 Valley Court gravity line to the Boulder Drive gravity line. The two remaining lines will
16 be reconnected to the existing line that transports the flows to the City of Scottsdale
17 treatment facility. The remainder of the lift stations, however, will remain within the
18 Boulders community. Therefore, there may still be odors emanating from these remaining
19 lift stations.
20

21 **Q. Does Staff have a position on whether the Commission should order the closure of
22 the WWTP?**

23 A. Staff believes that recommending the closure of a facility that is used and useful and that
24 is operating in compliance with all applicable rules and regulations creates a difficult
25 situation because it is included in the rate base, as such, it is part of setting the revenue

¹ Decision No. 71685 at 53.

1 requirement.² It should be noted that the Company argued that it was unclear whether the
2 Commission has the authority to order it to remove plant that is used and useful and
3 operating within regulatory requirements, but because of the overwhelming support of the
4 community in paying a reasonable amount to close the WWTP, the legal argument should
5 not stop the Commission from crafting a remedy.³ However from the public interest and
6 public policy perspective, and the overwhelming desire of the community to close the
7 plant, the Commission has the authority to order the closure of the plant.
8

9 **Q. Does this conclude your Rehearing Direct Testimony?**

10 **A. Yes it does.**

² Decision No. 71685 approved a surcharge mechanism, similar to a Arsenic Cost Recovery Mechanism, to recover costs associated with the plant closing, to be subject to true up at the Company's next rate case. The Company must file for a rate case within 12 months of plant closure.

³ Company's Closing Brief at 10.